

T-124.1

REPRODUCED AT THE NATIONAL ARCHIVES

DRAFT**OFFICE OF TRUST FUNDS MANAGEMENT**

July 15, 1992

INTRODUCTION BY DIRECTOR OF OTFM

The following paper regarding the future conduct of the reconciliation and audit of Indian trust funds presupposes a firm commitment at both the senior career and political levels of management of the Bureau of Indian Affairs and the Department of Interior to achieve a lasting reformation of the Bureau's administration of these monies. If that commitment exists, as I believe it does, and as we have repeatedly assured tribal representatives that it does, then I am convinced that the approach proposed herein will not only produce enduring improvements in the Bureau's capabilities, but will also greatly facilitate the transition to the increased tribal role in the administration of these funds that is contemplated by the draft Strategic Plans for the future operations of this office that are currently under review.

We have appended to this discussion of the future of the reconciliation/audit of Indian trust funds administered by the Bureau, a brief narrative of considerations that we believe should be included in the development of that Strategic Plan.

As a result of the necessity of proceeding with the reconciliation/audit process, even as the Strategic Plan is being developed, it is further recommended that, for clarity of understanding and future accountability, the Strategic Plan include detailed work plans for the conduct of the activities discussed in this paper, with great emphasis placed on the importance of reducing the following narrative concepts to work plans. OTFM will, and fully expects to, work with all appropriate parties in the preparation and completion of this Strategic Plan, with particular regard to the development of the related work plans.

RECONCILIATION OF INDIAN TRUST FUND ACCOUNTS

Since the mid-1980's, the Bureau of Indian Affairs has made a number of attempts to remove the administration of Indian trust funds from the environment of the U.S. Treasury to that of a commercial financial institution. Beginning in Fiscal Year 1988,

the Congress has imposed a requirement that all trust funds be reconciled, audited, and certified before custody of any funds is transferred from the U.S. Treasury to a private sector institution.

In May of 1991, a contract was executed between the BIA and Arthur Andersen & Co. for design and conduct of the reconciliation of Indian trust fund accounts. In the thirteen intervening months, Arthur Andersen & Co. has made significant contributions to the Bureau's capabilities in this area, but perhaps none more important than the 20+ man-years of experience the Bureau has gained in a single one-year period, experience that we have drawn upon in the preparation of this document regarding future efforts for the reconciliation of Indian trust funds.

If the effort to reconcile Indian trust fund accounts is viewed merely as a multi-million dollar effort to comply with a Congressional directive, nothing of lasting value, including the reconciliation itself, will have been achieved. If, on the other hand, the effort is viewed as Assistant Secretary Brown and Deputy Commissioner Matheson have directed that it be approached, the Bureau will have achieved monumental reform of its ability to discharge its trust responsibilities to Indian tribes and individual account holders.

To appreciate fully the approach to trust fund reconciliation outlined in this paper, it is important to understand exactly what the initial Arthur Andersen approach involved, and what it did not involve. To support their reconciliation approach, Arthur Andersen succeeded in converting the data base maintained by the BIA Finance System to the computer hardware equipment utilized by the Office of Trust Funds Management. Arthur Andersen & Co., in conjunction with OTFM staff, then inventoried some 69,000 boxes of records maintained in various Bureau locations and federal repositories and selected some 17,000 as containing relevant source documents to be utilized in account reconciliation. Arthur Andersen & Co. also developed an automated program for comparing actual earnings on investments with an agreed-upon, calculated "reasonable" rate for various investment years. Notwithstanding the enormous contributions made by Arthur Andersen in creating an electronic "paper trail" to be utilized by the subsequent audit team, the reconciliation process itself remains, in large part, a manual, i.e., labor intensive, process.

The actual process utilized by Arthur Andersen in the reconciliation of tribal accounts, and the process in which Bureau personnel are being trained, involves the accumulation of "source documents;" the sorting of these documents into "reconciliation packages," according to transaction, type, etc.; the numbering of documents or document packages; the manual reconciliation of these documents to the electronic data base; the manual process of converting this paper file to an electronic image file; and finally the return of the records to their appropriate repository (agency,

Area Office, Federal Records Center, National Archives, etc.).

Extrapolation from experience to data has led Arthur Andersen to estimate that the ultimate cost of reconciling all tribal trust fund accounts, utilizing this approach, could cost from \$5 million to \$15 million, and that of reconciling individual Indian money (IIM) accounts could be anywhere from \$108 million to \$281 million. Not only are these costs likely to be ultimately prohibitive, but a number of other concerns with this approach have surfaced as the full implications have become more clear with experience. One of the concerns expressed by tribal account holders is that by the move to a global approach, there would be little participation by tribal staff in the reconciliation process. In fact, three months were dedicated to entrance conferences for only six tribes and three IIM locations in the early days of the contract.

An equally troubling consideration arising from the current approach is that most of the "source documents" utilized in the reconciliation procedure may not be regarded by a subsequent audit firm as sufficient, standing alone, to support an audit opinion. That is to say, the source documents utilized in the present procedure, while probably sufficient to reconcile the Bureau's records of accounting for collections and disbursements, do not include the originating documents governing the terms of those collections and disbursements. In short, concern has been expressed that the present procedure might well result in reconciling the Bureau's own records from the Area Office to the Central Office and back to the disbursing level, but leave unexamined the underlying, governing records at the actual point of collection, where many mistakes and some mischief have been known to occur. In other words, there is a reasonable concern that the Bureau not confuse an exercise of simply balancing its own internal clerical records with the legitimate expectation of account holders that they be provided an accounting of the administration and disposition of their trust assets. While this approach may ultimately be acceptable for tribal accounts because of built-in safeguards in the systems for posting receipts, it is fraught with difficulties in the reconciliation of IIM accounts.

A further troubling aspect of the current approach is that it will take years to complete even the reconciliation of a single account, proceeding as it does on a year by year reconciliation of all accounts. Several untoward considerations arise from this concern. For example, if the Bureau proceeds on this course exclusively, only to learn at a later date that the result is not an auditable product, millions of dollars and years will have been spent in an ultimately unsuccessful enterprise. This paper, on the other hand, contemplates an approach that offers the very real prospect of achieving significant progress in the short term while further reviewing the acceptability of the current approach. In addition, the approach recommended here will permit an orderly examination of many of the underlying sources of possible errors in the collection

and administration of Indian trust lands.

In the first year of the contract, Arthur Andersen & Co. has largely completed the reconciliation of financial transaction source documents to the Bureau's data base for Fiscal Year 1990. Some three hundred transactions are recorded in the data base for which appropriate source documents have yet to be located. Perhaps as many as 50% of the transactions in Fiscal Year 1989 have been reconciled under the present procedure, and work on Fiscal Year 1991 is being continued, utilizing that year's transactions as a training program for Bureau staff.

RECOMMENDED APPROACH

I. Tribal Account Reconciliation

Several aspects of Arthur Andersen & Co.'s present and contemplated activity will be continued. Arthur Andersen will continue with the reconciliation of transactions recorded in the data base for Fiscal Years 1988, 1989, and 1990. In addition, Arthur Andersen is utilizing the records assembled for Fiscal Year 1991 transactions to train Bureau personnel in all aspects of the procedure developed and utilized for 1988 through 1990. Bureau staff will continue to search for the remaining documents needed to complete work on 1990 transactions.

Arthur Andersen will also continue the work of reconciling the Bureau's records to external systems, particularly the reconciling of OTFM's Finance System to accounts maintained by the U.S. Treasury. This is an important issue that has caused both the Bureau and the Treasury significant difficulties over the years, and it is an issue that will continue to invite criticism so long as the Bureau maintains Indian trust funds in the Treasury environment unless and until these systems are reconciled as a routine matter.

Until such time as the work is completed or Bureau staff have developed the capability to perform the remaining tasks, Arthur Andersen will continue to perform the investment analysis developed for comparing actual earnings with the rate determined by the formula agreed upon with Tribal representatives as a benchmark for determining reasonable rates of return for annual investment periods. Since one of the greatest concerns expressed most often by Tribal representatives is that significant amounts of money have too often been left uninvested or imprudently been left in Treasury overnight deposits for unacceptable periods of time, this work will be critical in addressing claims that almost certainly will arise in the course of, or in the wake of, the present effort.

Soza and Associates, an 8(a) contractor recently retained, will

continue to assist OTFM and Bureau field locations in maintaining current reconciliation of all trust fund accounts for the period beginning with October 1, 1991. This work will involve performing hands-on reconciliation activity within OTFM and at remote sites as required, and providing periodic training as required as a result of personnel changes, etc. This contract will permit the principal reconciliation contractor to concentrate on the historical work which has been designed and undertaken at considerable expense, as well as the external systems reconciliation with Treasury, etc. The Soza team, in conjunction with OTFM staff, will contribute materially to the lasting success of the historical reconciliation and audit of trust fund accounts throughout the Bureau.

With respect to both the Arthur Andersen and Soza contracts, as well as other contracts that may be determined to be useful and cost effective in the reconciliation of tribal accounts, OTFM management will monitor not only the contractors' performance for compliance, but will also substitute Bureau personnel for contract labor as the availability and capability of Bureau staff increase throughout the remaining time periods to accomplish these tasks. Tribal representatives have also expressed great interest in participating in these efforts wherever possible; consequently, both Bureau and contractor personnel will be instructed to work cooperatively with tribal staff throughout the conduct of these reconciliation activities training activities. Care will have to be taken, of course, to ensure that this does not result in either unnecessarily adding to the cost of contractor performance or unnecessary duplication of effort.

II. Tribal Trust Fund Audits

A. Judgment Funds

For the reasons suggested above, the current approach to reconciliation, audit, and certification will require years to complete. As is already apparent from the experience with transactions from Fiscal Year 1990 alone, if documents from a single year cannot all be located, no part of the task as presently designed can ever be said to be completed at all. While that effort to reconcile the books and accounts of the BIA is no doubt a meritorious one, standing alone it does nothing to provide Indian account holders with an acceptable accounting of their monies.

On the other hand, there is available a means of providing many tribes with an acceptable accounting of a substantial portion of their monies, if not all of them. More than \$1.3 billion, more than one-half of the total portfolio of Indian trust funds, consist of judgment award funds held in tribal accounts. This sum represents some 70% of the total of tribal trust funds. The records for all these funds are located at Central Office levels; the level of activity in these funds is extremely light compared to

the "income funds" maintained for tribes and consists almost exclusively of investment rollovers and occasional distributions; tribes themselves in many if not most instances also have a good understanding of the source, history of transactions, and other dispositions of these funds; and these funds are probably in auditable condition at the present time.

Consequently, a single contract will be awarded to conduct an audit of all judgment funds held in tribal accounts. From one perspective, this will result in the accomplishment of one-half the ultimate objective of providing account holders with a reconciled, audited, and certified statement of their accounts in less time than the present approach will require to provide only an uncertain reconciliation.

On the other hand, the tribal "income funds" represent only some 30% of the total tribal funds, but an inordinate proportion of the transactions involving these funds. A significant proportion of these remaining funds, however, can be covered by a series of custom audits, carefully selected to confirm amounts which may be due the tribes selected, and to identify possible sources of errors and deficiencies in accounting for tribal revenues and in management of invested funds.

B. Customized Tribal Audits

Because of the uncertainties regarding the ultimate utility of the product of the present reconciliation effort, and because of the certainties regarding the ultimate time required and cost of the present approach to account reconciliation, the Bureau will proceed simultaneously with a manageable program of exploring other effective approaches. In doing so, the Bureau will select a number of tribes, not to exceed five, who agree to conduct audits of their own accounts through auditing firms of their own choosing.

These tribes will be chosen according to criteria to be developed, including tribes with large account balances, tribes with selected sources of income to test the reported values produced by the underlying resource management programs, and tribes who indicate their belief that their accounts are in sufficiently auditable condition that these efforts can be successful without having to replicate the work that would otherwise be done over a period of years by Arthur Andersen or Bureau staff in reconstructing the accounts.

In addition, the Bureau will attempt to select at least one multi-tribe agency at which all the affected tribes will agree to participate in a joint audit by a single firm of all the tribal income accounts generated at that agency. Finally, the Bureau will also conduct an audit of the tribal IIM accounts at the six IIM

sites at which entrance conferences have already been conducted by Arthur Andersen and Bureau staff.

This effort will permit the Bureau to test in a controlled fashion possible alternatives to the present Arthur Andersen approach, and do so in a way that presents very real prospects for accomplishing a significant portion of that part of the ultimate objective of providing tribal account holders with an audited statement of their accounts without waiting for the global reconciliation process to conclude.

Perhaps more importantly, this approach will allow the Bureau to identify in advance problem areas in program management, deficiencies in agency or Area accounting procedures, or difficulties in the maintenance of supporting systems such as land records or IRMS which would render the ultimate results of Arthur Andersen's reconciliation efforts unreliable in any event. In short, these customized audits of tribal income funds will provide both a check on, and a backstop for, the current reconciliation approach. To the extent that these audits can be successfully concluded in a cost effective manner, they will, of course, not only achieve the additional, desired result of accomplishing in a few places what we hope ultimately to achieve in all locations, but may provide a model that can be replicated in many other locations as well.

These selected audits of judgment awards, income accounts of selected tribes, selected tribal IIM accounts, and the tribal accounts of at least one multi-tribe agency would, if successful, reduce by hundreds of thousands the number of transactions that would otherwise have to be reconciled manually by the present approach under the Arthur Andersen contract.

The Bureau will provide funds for these custom audits by firms of the tribes' choosing. This will require, of course, significant planning in terms of the scope to be agreed upon, the willingness of the contracting parties to be bound by the results, the format in which final reports will be prepared, and methods of resolving disputes which may arise in the conduct of the work. At the end of the first year of this effort, the Bureau will consult again with tribes on the results of the effort to that date, and the promise that this approach appears to offer for other tribes' income accounts.

III. IIM ACCOUNT RECONCILIATION

While the present method of account reconciliation as developed by Arthur Andersen & Co. has been devoted almost exclusively to tribal accounts, the firm's limited inquiries into IIM accounts at selected locations have revealed that the approach being utilized

for tribal accounts will be prohibitively expensive for IIM accounts and have led the contractor to suggest a number of alternatives, primarily involving management decisions regarding a number of issues such as materiality of size of transaction, extent of inquiry into underlying ownership records, and restricting the level of inquiry into comparing identities of payees with account holders, etc.

In other words, the contractor has recommended that in the reconciliation of IIM accounts, the Bureau concentrate on verifying the debits and credits entered onto the Bureau's books in significant, i.e., greater than \$5,000, transactions. For the reasons which follow, however, we believe that this is the single aspect of IIM administration that historically is least likely to contain material errors and omissions.

In the conduct of the reconciliation and audit of IIM accounts, we must proceed from this point in light of what we have already learned from the limited inquiries which have been conducted, and in light of what is legitimately expected of, at least, a reasonably prudent fiduciary. In this regard, we know already from the limited inquiries conducted by Arthur Andersen that the Bureau's historic practices in the collection, administration, and distribution of individual Indian monies have been burdened with errors from many sources.

These sources of error include errors in the chain of title of the properties generating the funds into individual accounts, and errors in the distribution of these funds due to tardiness in the probate of Indian estates and lag times between the settlement of estates and the posting of receipts into individuals' accounts. In addition, we know that funds received into the IIM investment portfolio have not uniformly been appropriately invested, and that losses from investment practices have in some cases been unfairly allocated to the IIM portfolio. We know, too, for example, that the dispositions of underlying trust assets have in some cases been undervalued and, in extreme cases, have not been valued at all on the Bureau's accounts with the result that underpayments or no payments at all have been accepted into collection. And, finally, we know that there have been clerical errors in the simple posting of debits and credits against these accounts. It is only this final category of error that the approach being used in the reconciliation of tribal accounts is designed to identify and reconcile.

On the other hand, in many locations individual account holders have routinely been provided with statements of their accounts as reflected on the Bureau's books for some time, and it is possible to provide each account holder with a detailed statement of his or her account activity. In some locations, however, these statements of account have not been provided, have not been provided routinely, or have not been provided with sufficient information or

detail to provide account holders with a fair opportunity to understand what is being portrayed.

The case cannot be made that the clerical errors that would be identified in the global reconciliation approach justify the cost and, more importantly, the unconscionable amount of time to provide what may very well not be an improved statement of accounts for account holders. Accordingly, it is recommended that the Bureau, with due dispatch, search its records to provide statements of accounts as shown on those records and to provide detailed information that heretofore has been contained only in summary statements for certain periods in the past. In this manner, both the account holders and Bureau personnel can subject those statements to the kind of professional review that has a high likelihood of identifying both systemic and specific errors and omissions in the accounting for individual Indian monies. In short, this approach contemplates the use of time-tested, proven techniques to bring earlier focus to the approach to be taken to provide confidence in the Bureau's accounting for individual Indian monies.

With all these considerations in mind, OTFM proposes a series of initiatives designed to provide a systematic look at the issue of IIM account reconciliation and audit from a number of perspectives with a view to collecting sufficient information and data to guide the Bureau's future decisions in this matter in an informed and reasonable manner.

A. Providing Statements of Accounts

Accordingly, OTFM will collect all available information from appropriate sources and locations to construct and mail to every individual account holder a detailed statement of his or her account activity, along with a letter advising account holders that this statement reflects the account as it is carried on the Bureau's books and inviting account holders to bring any questions or discrepancies to the attention of the local agency. Training of agency personnel will be conducted as required to ensure that appropriate and responsive answers can be provided to account holders' questions, and that problem areas or unresolved discrepancies are entered into a file for subsequent research. It is presently proposed that these statements can be provided for account holders for the period of 1968 to the present.

B. Investigative Projects by Program

The Bureau itself will conduct a series of investigative projects designed to locate and identify problems or deficiencies in underlying program management that would have caused errors in the collection and distribution of income from the disposition of trust

assets. These projects will include inquiries into the Bureau's or Department's realty, minerals, forestry, and agricultural programs, at a minimum. These investigative projects may or may not turn up deficiencies or discrepancies that affect the balances reflected on the Bureau's books with respect to any individual's IIM account. They will undoubtedly, however, provide important insights into the future conduct of the administration of Indian trust assets and the integration of Bureau programs and systems.

C. SIA/Contractor Desk Reviews

Besides the program reviews that will be made, OTFM proposes as well a selected series of desk reviews on an account basis to confirm the integrity of account information, or to identify problem areas that warrant further inquiry with respect to selected accounts, and which may counsel particular attention in other accounts.

D. Investment Analysis

OTFM will also continue to conduct analysis and research into the investment program as it relates to the investment and distribution of IIM funds. We have already gathered significant information, for example, regarding the investment losses which have been allocated to the IIM portfolio, and we will continue to analyze the earnings and distribution of investments of IIM funds.

E. Stratification and analysis of Accounts

OTFM will conduct additional analysis of IIM accounts with respect to such variables as size, revenue source, numbers at various locations, numbers of transactions, etc., in order to form a data base which can be used in conjunction with the other initiatives listed above in the development of the ultimate Bureau plan for addressing the reconciliation and audit of IIM accounts.

F. Reconciliation of IRMS to Finance Systems

OTFM will continue present efforts to effect the reconciliation of the IRMS to the Finance System in order to maintain current reconciliations, even while these investigative, data-gathering initiatives are underway with respect to past practices in the administration of IIM accounts.

It is understood that all we know for sure at this point is that the approach Arthur Andersen has investigated will be prohibitively expensive and could not be justified under any scenario for the global reconciliation of 290,000 IIM accounts. It is contemplated that the initiatives discussed above will provide the Bureau and Departmental management with reliable information upon which to base future deliberations and decisions with respect to the

reconciliation and audit of these accounts.

CONCLUSION

OTFM looks forward to working with all appropriate parties in the development of detailed work plans to carry out the programs and initiatives discussed in this paper in conjunction with the development of a Strategic Plan for future administration of Indian trust funds. A constant tension is expected between the immediate needs of OTFM for additional personnel and contractor assistance in the conduct of the activities discussed in this reconciliation paper, and the prospect of downsizing the office in future years if the workload of the office is significantly reduced as a result of large sums of money leaving the Bureau or significantly longer investments are directed, as tribes begin to take a more active role in the administration of these funds. Similarly, if private financial institutions are significantly involved in future administration of these funds; if large numbers of IIM accounts are closed out; or if some of the functions presently handled by OTFM are determined to be more appropriately handled at the agency or area level, then the capabilities developed at OTFM will have to be transferred accordingly. All these prospects for significantly reducing the role of OTFM in the future, as well as the immediate needs for significantly increasing the activities of the office, must be handled fairly in the development of the Strategic Plan. We look forward to constructive and creative deliberations involving all the appropriate parties, including the BIA Reorganization Task Force, the Intertribal Monitoring Association on Indian Trust Funds, Congress and its arms, and all levels of the Executive Branch in dealing with these apparent dichotomies in the development of a Strategic Plan for the Office of Trust Funds Management.